

Re: LOSAP and Stipends

The Division of Local Government Services is in receipt of your correspondence regarding whether LOSAP is a pension program and whether the stipend that you receive as Chief of your volunteer organization prohibits you from participating in the LOSAP program.

The Division is pleased to assist you in this matter. Please be aware however, as an administrative agency, the Division of Local Government Services is not authorized to provide legal advice. Rather, we are offering to provide you with direction in helping you to interpret the LOSAP law.

The Length of Service Award program is a system established to provide tax-deferred income benefits to active volunteer members of an emergency service organization. The plans are designed to be defined contribution programs based on applicable features of deferred compensation programs adopted by local government units pursuant to P.L. 1977, c.381.

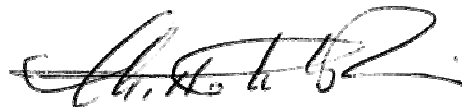
The Internal Revenue Service's Private Letter Ruling 200224002 states that an eligible member may not receive compensation from the department or squad for performing firefighting and prevention services and emergency medical services and ambulance services other than reimbursement for (or reasonable allowance for) reasonable expenses, incurred in the performance of such services, or reasonable benefits (including length of service awards) and nominal fees for such services, customarily paid by the departments or squads in connection with the performance of such services by volunteers.

In addition, N.J.A.C. 5:30-14.7(b) states that other authorized programs for emergency service volunteers, such as stipends and uniform allowances, shall not be affected by the restriction on the number of LOSAPs a municipality or fire district may have. An eligible member is permitted to receive an allowance or stipend from the emergency service organization as long as that compensation does not qualify as income.

Finally, the federal Fair Labor Standards Act (FLSA) restricts a paid employee from performing similar services in an unpaid capacity. Paid firefighters and emergency service employees of a sponsoring agency cannot also be unpaid volunteers if they perform the same type of services for which they are employed and paid to perform.

Should you have any questions, please contact Soyini Wilson at (609) 984-2105 or by email at swilson@dca.state.nj.us.

Sincerely,

A handwritten signature in black ink, appearing to read "M. U. Watkins", written in a cursive style.

Matthew U. Watkins, Director
Division of Local Government Services

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